

State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



Roger Kennedy and Susan Von Hendy
54 North Main Street
Sherborn, MA 01770

Re: 253 Dockham Shore Road, Gilford, NH

ADMINISTRATIVE ORDER

No. WD 03-020

August 15, 2003

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Roger Kennedy and Susan Von Hendy and Keith Salerno Construction Company pursuant to RSA 485-A:22. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Roger Kennedy and Susan Von Hendy are individuals having a mailing address of 54 North Main Street, Sherborn, MA 01770.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 485-A:13 and related sections, DES regulates the discharge of pollutants to surface waters under a permit system. As part of this program, the Commissioner of DES has adopted Env-Ws 401 – 405 relating to permits and has adopted Env-Ws 1700 to establish water quality standards for the state's waters.
2. Roger Kennedy and Susan Von Hendy ("the Owners") are the owners of property located at 253 Dockham Shore Road, Gilford, NH identified as Lot 039, Map 216 on the Gilford tax records ("the Property").
3. Keith Salerno Construction Company ("Salerno Construction") is the contractor hired by the Owners to renovate the structure on the Property, including raising the structure and building a foundation under it.
4. The Property is on the shores of Lake Winnepesaukee ("Lake"), a Class B surface water of the State as defined by RSA 485-A:2, XIV and classified by RSA 485-A:11.

5. On August 7, 2003, DES received a complaint that brown water was entering Lake Winnepesaukee from construction activity occurring at the Property.
6. DES staff were immediately dispatched to the Property to assess the water quality and the source of the contamination to Lake Winnepesaukee. The staff noted that the water in front of the Property was brown and extremely turbid, and observed that the source of the problem was water that was being pumped out of a foundation hole on the Property to the ground, where it ran unobstructed into the Lake.
7. DES staff collected water samples at the August 7 inspection, which were analyzed that day by the DES Limnology Center. Turbidity results were measured at 23.9 Nephelometric Turbidity Units (NTUs) for a sample collected where the runoff had entered and mixed with Lake Winnepesaukee water. Background levels historically collected in the Lake are less than 0.5 NTUs.
8. Pursuant to RSA 485-A:13, I, it is unlawful for any person to discharge of any waste to the surface water of the State without first obtaining a written permit from DES.
9. RSA 485-A:2, XVI defines "waste" as "industrial waste and other wastes." RSA 485-A:2, VIII defines "other wastes" as including "any other substance harmful to human, animal, fish or aquatic life."
10. Siltation carried into surface waters is harmful to fish and aquatic life when it exceeds the water quality standard, and so is "waste" as defined in RSA 485-A.
11. Env-Ws 1703.11(b) establishes the turbidity standard for Class B waters as not to exceed background conditions by more than 10 NTUs.
12. DES has not issued any permit to the Owners or to Salerno Construction allowing a discharge of sediment-laden water, with or without treatment, into the Lake.
13. Based on the turbidity analysis on August 7, DES requested the State of New Hampshire Marine Patrol to notify Salerno Construction to suspend all pumping activities and to implement on-site erosion control practices before conducting any further work.
14. DES staff made several attempts on August 7, 2003 to reach Keith Salerno of Salerno Construction but were unsuccessful.
15. On August 12, 2003, DES staff again inspected the Property and observed the following:
 - a. The foundation embankment was eroding into the dug-out foundation.
 - b. Cement had been recently poured into cellar foundation forms.
 - c. An automatic electric pump was installed in the foundation to remove any water and sediment entering the constructed cellar hole.

- d. Hay bales and siltation fences had been placed on the beach area between the cellar hole and the Lake.
 - e. The pump engaged during the inspection and the water path was observed by the inspector.
 - f. The sediment-laden runoff was directed via hose onto a hay bale. The runoff then traveled over the sandy beach creating rutting of the beach due to sediment erosion from the force of the runoff.
 - g. The sediment-laden runoff traveled unimpeded under the siltation fence and directly under the dock located in front of the Property.
 - h. The water was observed to be extremely brown and turbid in the Lake.
16. Water samples were collected in the mixing zone of the discharge and Lake and analyzed by the DES Limnology Center. A background sample was collected outside the turbidity plume for comparison purposes. Turbidity results were 338 NTUs for the sample collected from the discharge mixing zone in the Lake. The background sample collected outside the plume area showed a turbidity of 0.55 NTUs.
17. On August 12 and August 13, 2003, attempts were made by DES to contact the Owners at their Sherborn, Massachusetts home. DES staff spoke with Ms. Von Hendy on August 14, and explained the significance of a water quality violation and the law concerning illegal discharges into public waters of the state.
18. On August 13, 2003, DES staff successfully contacted Keith Salerno of Salerno Construction. DES staff explained the significance of a water quality violation to the contractor and explained the law concerning illegal discharges into public waters of the state. The contractor explained that he was from Massachusetts and was not familiar with New Hampshire laws concerning water quality standards. He said that he would disconnect the pump and let the cellar fill up with water. He also said that the foundation could collapse if the water was not pumped. Staff recommended that the water be pumped out by truck.

D. DETERMINATION OF VIOLATIONS

1. Roger Kennedy and Susan Von Hendy have violated RSA 485-A:13, I, by discharging waste from the Property to a Class B surface water of the State without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Roger Kennedy and Susan Von Hendy as follows:

1. Refrain from discharging any sediment into the Lake for the duration of all construction activities on the Property.

2. Hire a qualified consultant to review the situation and to make recommendations relative to removing the water from the cellar hole without discharging waste to Lake Winnepesaukee or otherwise causing water quality violations.
3. Implement the recommendations of the consultant.
4. Send any correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

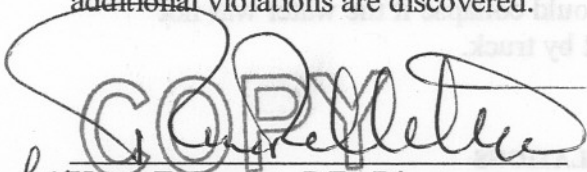
Jody Connor, Director, Limnology Center
DES Water Division
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-7894
e-mail: jconnor@des.state.nh.us

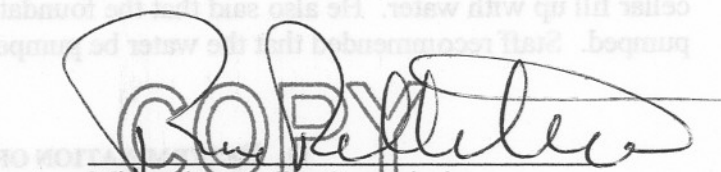
F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Roger Kennedy and Susan Von Hendy of their obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor compliance and will take appropriate action if additional violations are discovered.


for Harry T. Stewart, P.E., Director
Water Division


for Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7000 0600 0023 9936 3165

cc: Gretchen Rule, DES Legal Unit
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Jody Connor, Director, DES Limnology Center
Town of Gilford
Keith Salerno Construction Company